

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

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4
5 SHAWN DRUMGOLD,) C.A. No. 04-11193-NG
6 PLAINTIFF) Courtroom No. 2

7 VS.

8 TIMOTHY CALLAHAN, ET AL.,) 1 Courthouse Way
9 DEFENDANTS) Boston, MA 02210

10
11 JURY TRIAL DAY 3
12 SEPTEMBER 10, 2009
13 10:30 a.m.

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19 BEFORE THE HONORABLE NANCY GERTNER
20 UNITED STATES DISTRICT COURT JUDGE

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23
24 VALERIE A. O'HARA
25 OFFICIAL COURT REPORTER

1 A P P E A R A N C E S:

2 ROSEMARY CURRAN SCAPICCHIO, ATTORNEY, Four
3 Longfellow Place, Boston, Massachusetts 02114, for the
 Plaintiffs;

4 Tommasino & Tommasino, by MICHAEL W. REILLY, ESQ.,
5 Two Center Plaza, Boston, Massachusetts 02108, for the
 Plaintiff;

6 Roache & Malone, LLP, by JOHN P. ROACHE, ESQ., 66
7 Long Wharf, Boston, Massachusetts 02110, for the
 Defendants.

8 Bletzer and Bletzer, P.C., by HUGH R. CURRAN, ESQ.,
9 300 Market Street, Brighton, Massachusetts 02135, for
 the Defendants.

10 Morgan, Brown & Joy, LLP, by MARY JO HARRIS, ESQ.,
11 200 State Street, Boston, Massachusetts 02109-2605, for
 the Defendants.

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EXAMINATION

Witness Name	Direct	Cross	Re-Direct	Re-Cross
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PROCEEDINGS

THE COURT: You can all be seated. Welcome. Here's what we're going to do today. First you'll be sworn in as jurors. It's a different oath than you took when you were sworn in as perspective jurors, so we'll swear you in as jurors. You each have notebooks that you'll be able to have during the course of the trial. After you're sworn in as jurors, I'll give you a few instructions and then the case will begin. Ordinarily we start at nine. Today I had the pleasure of swearing in citizens at the JFK Library, which is one of the unambiguously wonderfully things I do, so that's why we're starting a little late. So, Maryellen, would you proceed.

(Jurors were sworn)

THE COURT: You can be seated. This is a civil case, as we indicated to you, and in a civil case, the plaintiff, Mr. Drumgold here, bears the burden of proof by what we call a fair preponderance of the evidence. I want to note this to you at the beginning. This is not the criminal standard, it's not the standard of beyond a reasonable doubt.

Fair preponderance of the evidence is a lower standard. It means, and I'll explain this later on, more probable than not. If the case is a scale, it means it's

1 tilting in favor of the plaintiff if you so find that the
2 evidence amounts to that. So we call it a fair
3 preponderance of the evidence.

4 The lawyers will address you first, and they'll
5 begin with what we call their opening statements. Bear
6 in mind that the opening remarks are simply statements of
7 what the lawyers anticipate the evidence will be, and
8 then at the end of the case, they address you again with
9 the closing argument, and the closing argument is when
10 they argue to you, yes, we think the evidence has proven
11 that.

12 The beginning is a statement, a road map, a
13 description of what they think will come out. The ending
14 is an argument as to whether or not they think they in
15 fact have made the points they said they would make. The
16 comments of the lawyers in the opening statement and in
17 the closing arguments and the comments to the lawyers,
18 the comments of the lawyers in their questions, because
19 sometimes they try to talk to you through their questions
20 as well, this is not evidence. The only evidence in the
21 case is the words that come out of the mouths of the
22 witnesses and the exhibits. That's the only evidence in
23 this case.

24 Think of this room as a hermetically sealed
25 room. The only thing you're going to learn about this

1 case has to come from the four corners of this room and
2 no place else and in that regard from the mouths of the
3 witnesses and from the exhibits.

4 What this also means is you are not to hear
5 about this case from any other source. That means you
6 can't ask my staff about it, you certainly can't do your
7 own research, you can't go online, you can't talk to your
8 husband or wives or friends about this case, oh, have you
9 heard about this case because if you do that, then you're
10 bringing into your jury room information that has not
11 come from the four corners of this room, information not
12 tested by the rules that we apply.

13 So this is the only place you're going to learn
14 about this case. We also ask you not to deliberate in
15 advance. In other words, there's an enormous desire to
16 talk about the case at lunch or whatever. We ask you not
17 to begin as a group to talk about the case until you get
18 it for your decision, and the reason is there are two
19 sides to the story. The more you talk about one side,
20 because that's all that you've heard, the more you're
21 likely to be in a track about that side and be focused on
22 that side.

23 We want you to begin deliberating only when the
24 case is completely over and when you've been instructed
25 as to what the law is, and at that point you can begin to

1 deliberate. Again, don't talk to my staff about the
2 case. Don't talk to anyone about the case. Don't talk
3 amongst yourselves. When you get home in the evening,
4 just relax. Just don't talk about anything other than
5 this.

6 In the course of the jury selection, lawyers
7 may have asked you questions which seem to present a view
8 of the case. Again, that's not remotely evidence. That
9 is the jury selection. They were trying to find out what
10 your attitudes are. The only evidence is what comes out
11 of the mouths of the witnesses or the exhibits. The
12 lawyers will object to one another's -- from time to time
13 they'll object. This is part of what lawyers do. It's
14 entirely appropriate. It's a way of screening the
15 evidence. Don't hold objecting against anyone.

16 For the most part, we're going to try to make
17 sure that there are no breaks in the presentation of
18 evidence here. We do take, I love to describe this, I
19 love to kid Maryellen, we take a break mid-morning for
20 snacks, right, we're all grownups here, but she calls
21 them snacks, other people in the world call them a coffee
22 break, so we'll have a break about 11:30. Ms. Molloy
23 makes sure that you are well taken care of. See, what
24 happens is, you'll have a coffee break and oftentimes we
25 don't. We're a little more grumpy than you are.

1 We will stop at 1:00. There may be times if it
2 looks like the case is not proceeding at the pace that I
3 promised you that we would want to open up afternoons.
4 There's no reason to believe that that's going to happen,
5 but we'd give you warning. We understand that being a
6 juror sometimes means allowing someone else to take over
7 your life, and we try to minimize that. If there's any
8 change in the schedule, we will surely let you know what
9 that is so that your responsibility can be carried out in
10 a way that doesn't do violence to the rest of your life,
11 so we're going to begin now with the opening statements
12 of counsel.

13 OPENING STATEMENT

14 MS. SCAPICCHIO: Thank you, your Honor. Good
15 morning, again, ladies and gentlemen, my name is Rosemary
16 Scapicchio, and I represent Shawn Drumgold.
17 Shawn Drumgold, you'll hear, spent 15 years in jail
18 because he didn't get a fair trial, and the reason he
19 didn't get a fair trial is because the defendant in this
20 case, Detective Callahan, hid evidence from the criminal
21 trial, hid evidence about an important witness from the
22 criminal trial so that when the jurors, like you in the
23 criminal case, sat there and heard the evidence, they
24 didn't get the whole story.

25 The evidence will be fair in this case,

1 Detective Callahan knew the whole story. He knew exactly
2 what happened with Ricky Evans. You'll hear that
3 Detective Callahan sat in that courtroom during the
4 criminal trial, and he heard Ricky Evans testify, and he
5 knew that Ricky Evans was lying, and he did nothing. He
6 didn't alert the Court, he didn't talk to the prosecutor,
7 he didn't even talk to Ricky Evans.

8 Now, ladies and gentlemen, you'll hear a lot
9 about what we call exculpatory evidence in this case and
10 why is exculpatory evidence so important, and I expect
11 you're going to hear from attorneys who will tell you
12 what the importance of exculpatory evidence is, but I'm
13 going to try to simplify it for you. If this was a
14 regular traffic case where two cars got in an accident at
15 an intersection and one witness said the black car went
16 through the red light and another witness said no, no,
17 no, the blue car had the red light and you were supposed
18 to evaluate those two testimonies, how do you tell who's
19 telling the truth? How do you know which one of those
20 two people are telling the truth?

21 Well, you'd want to know what would motivate a
22 witness to come in and testify. You'd want to know
23 what's in it for them to come in and testify, are they
24 just standing on a corner and they see something happen
25 and they tell you what it is because certainly if that's

1 the case, it seemed to be more credible, or is there
2 something in it for them? That's where the exculpatory
3 evidence comes in.

4 What if they found out that witness who said
5 the black car went through the red light was paid money?
6 What if you found out that witness was put up in the
7 Howard Johnson's, what if you found out that that witness
8 had some pending cases and the pending cases, there were
9 promises that those cases would go away, what if you
10 found out that that witness was shown some photos that
11 nobody ever knew about?

12 Of course it would make a difference as to
13 whether or not you believe that witness. That's the
14 importance of exculpatory evidence, but in a criminal
15 setting, it's even more important. In a criminal
16 setting, there's nothing wrong with a prosecutor
17 promising a witness or a police officer promising a
18 witness consideration for their testimony. It happens
19 all the time.

20 You can promise a witness that you're going to
21 fix their cases, you can promise a witness that you're
22 going to be able to give them some money, you can promise
23 a witness that you're going to be able to put them in a
24 hotel, but you have to tell the defendant because you
25 have to let the defendant have the opportunity to tell

1 that criminal jury to say can you really believe this
2 witness? Look at all the things they did for him. They
3 put him in a hotel. They gave him money. They fed him
4 information. Can you believe what he said?

5 In the context of a criminal case without
6 exculpatory evidence, you can't have a fair trial because
7 the criminal jurors don't get to evaluate the witnesses
8 the same way that they would if they actually had the
9 evidence.

10 Now, you're going to hear a lot about the
11 original criminal trial in this case. You're going to
12 hear that a 12 year-old girl was sitting on a mailbox on
13 the corner of Homestead Street and Humboldt Avenue and
14 she was shot in the head. You're going to hear evidence
15 that 10 days later Shawn Drumgold was arrested.

16 About a year later Detective Callahan takes
17 over the case. When Detective Callahan takes over the
18 case, there's one witness by the name of Tracie Peaks who
19 says anything at all about Shawn Drumgold. She says she
20 sees Shawn Drumgold in a red turtleneck. That's the
21 trial testimony. You'll hear the trial testimony of what
22 she says, but they have no motive for Shawn Drumgold to
23 be involved in this. They have no statements from
24 Shawn Drumgold. They have no physical evidence that
25 connect Shawn Drumgold to this case. They have no gang

1 affiliation.

2 You'll hear that the Commonwealth's theory was
3 that Humboldt and Castlegate were two gangs who were
4 fighting with one another and that the intended target,
5 Mervin Reese and Chris Chaney, were the intended targets
6 and this little girl got hit because she happened to be
7 there. She was never the intended target. Back in 1989
8 when Detective Callahan took over this investigation,
9 they couldn't connect Shawn with any of that. He wasn't
10 a gang member. There was no motive. There were no
11 statements. There's no physical evidence.

12 Detective Callahan hits the jackpot. He comes
13 up with a witness by the name of Ricky Evans. You'll
14 find out that Ricky Evans about six months after
15 Tiffany Moore was killed was shot himself and his cousin
16 was killed, and Detective Callahan was working on that
17 case.

18 You'll hear that Ricky Evans was 19 years old
19 at the time, victim of a gunfire and homeless. You'll
20 hear evidence of what Detective Callahan did to get him
21 to testify against Shawn Drumgold. This is what he did,
22 ladies and gentlemen, he took Ricky Evans when he was
23 homeless and he put him in the Howard Johnson's and he
24 let him charge his meals and he let him bring friends
25 over, and he gave him money, and he promised he was going

1 to fix his pending cases, then he fed him details of the
2 Tiffany Moore murder that would implicate Shawn Drumgold
3 and his co-defendant.

4 He told Ricky Evans, "Remember the car was
5 white." It just so happened that a 9-1-1 call would say
6 the car was white. "Remember Shawn had a silver gun and
7 Lug had a black gun," it just so happens there were two
8 guns in the case. "Remember they went in a certain
9 direction." "Remember they went Chris Chaney and
10 Mervin Reese," details of the crime Ricky Evans knew
11 nothing about. Detective Callahan fed him those details
12 so that he could come in and testify against
13 Shawn Drumgold and they would get their conviction.

14 That you'll hear is exactly what happened.
15 Ricky Evans took the stand in the criminal trial and spit
16 out exactly what Detective Callahan had fed him. He said
17 he saw Shawn Drumgold before the crime with Terrance
18 Taylor, he said Shawn Drumgold was in a white car, he
19 said he saw a firearm in Shawn Drumgold's pants, he said
20 he heard Terrance Taylor, a kid by the name of Lug who
21 was a co-defendant, make a statement I know where Reese
22 and Chaney are at, the intended targets of the homicide
23 in this case.

24 Then you'll hear evidence that after the
25 homicide Ricky Evans will say he heard from

1 Shawn Drumgold and Terrance Taylor again, that they come
2 up to see him again and they told him the guns were hot,
3 devastating evidence in a criminal trial all provided by
4 Detective Callahan, and Detective Callahan, as I told
5 you, sat in the courtroom while Ricky Evans testified,
6 and when the lawyers were doing the best job they could
7 to try to shake Ricky Evans' testimony, because you'll
8 hear from the lawyers, and they will tell you no one ever
9 told me he was put up in the Howard Johnson's, no one
10 ever told me he was promised anything regarding his
11 pending cases, no one ever told me Detective Callahan
12 gave him money, no one ever told me Detective Callahan
13 showed him pictures of Shawn Drumgold and Terrance Taylor
14 and pointed to their pictures and tell Ricky Evans who
15 they were. I didn't know any of that, and the lawyers
16 will tell you had I known that, I would have asked him
17 about it at trial.

18 My whole theory of the case would have switched
19 from a mistaken identity to police misconduct. How do
20 you trust an investigation where an officer is feeding a
21 main witness details of the crime? How do you trust
22 anything about that? You'll hear from Bob George who
23 represented Terrance Taylor, and you'll hear from
24 Steve Rappaport who represented Shawn Drumgold. They'll
25 both tell you they tried this case and they did their

1 best, and they never got the information from anyone
2 about Ricky Evans.

3 All they knew about Ricky Evans during the
4 first criminal trial back in 1989 was that Detective
5 McDonough, Callahan's partner, took Ricky Evans to
6 Roxbury District Court to remove some default warrants
7 and that his cases were continued until some time in
8 October after the Drumgold criminal trial.

9 That's all they knew about Ricky Evans, and try
10 as hard as they could to shake his story, they couldn't
11 because he hid what really happened. When
12 Steve Rappaport, Attorney Rappaport, who's representing
13 Shawn Drumgold asked Ricky Evans as he sat on that
14 witness stand, "What did you get? What's in it for you?
15 Were you promised anything in exchange for your
16 testimony? Any rewards from anyone?" He said that right
17 in front of Detective Callahan sitting right at a table
18 just like this, and you know what Ricky Evans told the
19 criminal trial, "I wasn't promised anything. I wasn't
20 promised anything, I'm doing this because I have a
21 daughter, and I would never want anything like this to
22 happen to my daughter."

23 Now, Detective Callahan knows that's wrong. He
24 knows he put him up in the Howard Johnson's, he knows he
25 paid him money, he knows he showed him photos. He knows

1 he's made promises about pending cases. He won't be able
2 to explain to you, ladies and gentlemen, why he just sits
3 there. If everything he's telling you is true, why does
4 he just sit here? You're going to hear me ask him a lot
5 of questions about that because he's not only a
6 detective, but he's a lawyer, so he knows the rules. He
7 knows what he's supposed to do. I don't think there's
8 any question that if his story is true, he allowed a
9 witness to commit perjury in a homicide trial and did
10 nothing about it.

11 Then we jump forward 15 years in 2003. You'll
12 hear evidence in the interim as to what was in the D.A.'s
13 file and not in the D.A.'s file, but we jump forward to
14 2003. There's a motion for a new trial, and Ricky Evans
15 gets subpoenaed. He shows up. In 2003, when Ricky Evans
16 shows up, he's not represented by any lawyers, he hasn't
17 spoken to anybody, shows up at the courthouse because
18 he's subpoenaed to show up, and he drops a bombshell.

19 He tells the Court in 2003, "I never saw
20 Shawn Drumgold, I never talked to him that night, I was
21 homeless, Detective Callahan helped me, he wanted me to
22 do this, and I would have done anything for him. I lied.
23 Detective Callahan fed me the details of the
24 Tiffany Moore homicide, and I testified about them
25 because he took me from being a homeless 19 year-old kid

1 and put me in the Howard Johnson's and took care of my
2 criminal cases and paid me money and I'm sorry."

3 In 2003, you'll also hear Detective Callahan
4 testify, and in 2003, his story was, let's see, "Yeah, I
5 think I remember putting him up at the Howard Johnson's.
6 Yeah, I think I remember saying something to him about
7 pending cases, but I never told the prosecutor. I never
8 told anybody in the district attorney's office what I did
9 for Ricky Evans, it never happened. I did put him in the
10 Howard Johnson's."

11 "As a matter of fact, I think I paid with my
12 own credit card. I never wrote a report about it. I
13 don't have any documentation in my file about it. As I
14 sit here under oath, I can't recall a single conversation
15 that I had with Phil Beauchesne," who was the prosecutor
16 prosecuting Shawn Drumgold back in 1989, "or with any
17 other prosecutor in the district attorney's office about
18 the promises I made to Ricky Evans. I didn't discuss it
19 with anybody, and I never paid him any money." He was
20 asked several questions about money, "never paid him any
21 money." That was his story in 2003.

22 You'll hear evidence that we pushed him on it,
23 "Could he have been there in relation to any other case?
24 What about that case where his cousin got murdered?"
25 You'll hear the name of that case is Treas Carter.

1 "Could he have been there in relation to the Treas Carter
2 case? Is that maybe why you were confused?" Detective
3 Callahan will say, "No, I put him in there in
4 relationship to this case, and I got him out of there
5 before the Treas Carter case went to trial," so it wasn't
6 Treas Carter, that wasn't the reason, at least not in
7 2003.

8 And he was asked questions, "What about
9 security? Were you worried that somebody could have hurt
10 him, is that the reason why you put him in the Howard
11 Johnson's?" "No, not worried about security at all, he
12 could come and go as he pleased, he could invite people
13 over, he could do all of those things. We weren't
14 worried about security."

15 Let me flash forward to 2008. Shawn Drumgold's
16 released from prison, and there's this civil suit. In
17 2008, you'll hear the story totally changes because the
18 standard in the civil suit, you'll hear, is that
19 Detective Callahan has an obligation if he makes promises
20 to a witness to tell the district attorney.

21 If you don't tell the district attorney, you're
22 going to be personally liable. You can't promise witness
23 things and not tell the district attorney because the
24 district attorney has to tell the defense attorney. So
25 in 2008, when Detective Callahan is being held

1 responsible, being sued as a result of his conduct,
2 here's the story, "I have a specific, absolute memory of
3 telling Phil Beauchesne about Ricky Evans. I told him
4 about the Howard Johnson's, I told him about the pending
5 cases, I didn't tell him about the money, forgot about
6 the money, but I did tell him about those other things.
7 I have a specific memory of telling him those things."

8 You'll hear he was asked, "Where did you get
9 the money?" Because the thing that's the most strange in
10 order for you to believe Detective Callahan's story is
11 that there is not a single piece of paper in the file of
12 the Boston Police Department that suggests Ricky Evans
13 was put up in the Howard Johnson's, that suggests he was
14 shown photographs of Shawn Drumgold and Terrance Taylor
15 that suggests he was paid money or that suggests he was
16 promised things in relation to his pending criminal
17 matters, not a single piece of paper.

18 But Detective Callahan, I expect, will come in
19 here and tell you when I testified in 2003 and I said I
20 didn't tell the D.A., what I really meant is I couldn't
21 tell them the exact date and the exact time that I told
22 them about these things, but I definitely told them about
23 these things.

24 When I said under oath that I didn't tell them
25 about those things, I said I didn't have a memory about

1 telling them those things but now I do 20 years later, I
2 have an absolute memory of telling them, my memory is
3 clear. You're going to hear me ask him questions, what
4 did you review to clear up that memory, because you'll
5 hear evidence, ladies and gentlemen, that there is not a
6 single piece of paper in the district attorney's file
7 that would suggest Detective Callahan told them anything,
8 not a single piece of paper about Ricky Evans being put
9 up in the Howard Johnson's, about him being paid money,
10 about fixing his pending cases, making promises about his
11 pending cases and showing him photo arrays, but there's
12 more.

13 In 2008, when Detective Callahan is being held
14 personally responsible for what happened to
15 Shawn Drumgold because Shawn Drumgold didn't get a fair
16 trial because he hid evidence, his story is let me
17 explain about the Howard Johnson's. It wasn't just so
18 that I could find Ricky Evans for trial, that's not the
19 real reason I put him in the Howard Johnson's.

20 I know I said that under oath in 2003, but I
21 didn't have a chance to review this file that has no
22 documentation in it, but let me tell you what really
23 happened, there were four reasons that I put him in the
24 Howard Johnson's, and I told the prosecutor about all
25 four, one was security, which in 2003 he said wasn't an

1 issue, one was the Treas Carter case, which in 2003 he
2 said wasn't an issue, one was because he wanted to find
3 him, didn't know if he could find him or not find him,
4 and another one he'll tell you is because a defense
5 witness went to go find Ricky Evans, and this is the guy
6 Larry Fallon, and he'll say when Fallon showed up where
7 Ricky Evans was, I thought maybe I should get him out of
8 there.

9 It wasn't his story in 2003, but that's his
10 story now when we're trying to hold him personally
11 responsible for hiding evidence that resulted in an
12 unfair trial for Shawn Drumgold.

13 You'll hear disputing evidence about how long
14 Ricky Evans was in the Howard Johnson's, how much money
15 he got paid, and I expect the defendants are going to
16 introduce the whole trial transcript in this case and say
17 look over here, look over here, he would have been
18 convicted anyhow. It doesn't matter. He would have been
19 convicted anyhow, take Ricky Evans out of the equation,
20 he would have been convicted anyhow, but I suggest to you
21 that the evidence will be the entire trial strategy would
22 have changed if they knew, defense attorneys back in 1989
23 knew what Detective Callahan knew.

24 The entire defense strategy would have changed.
25 Those lawyers would have been able to tell the criminal

1 jury trial about the promises that Detective Callahan
2 made to Ricky Evans, about the fact that he fed
3 Ricky Evans information.

4 What does that do to a criminal case? You find
5 out that the lead detective needs to feed a witness
6 information to commit perjury, would you believe anything
7 that that detective did in that case? Would you start to
8 doubt it? Because that's what I expect the defense
9 attorneys will tell you how their strategy would have
10 changed if they knew, so it's not as simple as taking
11 Ricky Evans out of the picture because you still don't
12 get the trial that you would have had if Detective
13 Callahan didn't hide that information, so they're going
14 to play trial transcript after trial transcript and this
15 one said this and this one said that, and they're going
16 to say, see, we think he would have been convicted
17 anyhow.

18 I want you to listen very, very carefully to
19 what Attorney George and what Attorney Rappaport will
20 tell you about how hard they tried during the 1989 trial
21 and that they had no explanation for Ricky Evans, and I
22 expect you're going to hear from two other witnesses, a
23 district attorney by the name of Paul Linn and a district
24 attorney by the name of David Meier.

25 Both of those district attorneys had the file

1 after Phil Beauchesne, who was the trial prosecutor, and
2 you won't hear from Phil Beauchesne. I expect that the
3 evidence will be that he's sick and he's unable to
4 testify, but you'll hear from Paul Linn, who I expect
5 will tell you that he represented the Commonwealth for a
6 period of time while Shawn was incarcerated and that he
7 had an ongoing duty to disclose exculpatory evidence and
8 that he didn't disclose anything about Ricky Evans.

9 I expect you're going to hear from David Meier
10 who will say he took over the file in 1999 and he had an
11 ongoing duty to disclose exculpatory evidence and he sent
12 five letters, none of which said anything about
13 Ricky Evans, and I expect that you're going to have the
14 trial file or prosecutor's file, I'm sorry, prosecutor's
15 file, and there won't be a single document in that file
16 regarding Ricky Evans in the Howard Johnson's, regarding
17 payments to Ricky Evans, regarding promises about pending
18 cases and regarding those photographs that
19 Detective Callahan showed him.

20 Ladies and gentlemen, you're going to hear a
21 lot of evidence in this case regarding how bad the
22 criminal trial was and how tragic it is that this little
23 girl is dead, and that's not what we're here for. The
24 focus of this trial is to hold Detective Callahan
25 responsible for hiding evidence that resulted in an

1 unfair trial, to hold Detective Callahan responsible for
2 what he did with Ricky Evans.

3 Now, you're going to hear that Ricky Evans has
4 a long criminal record, he's made some inconsistencies,
5 you're going to hear all of that, he's not a perfect
6 witness by any stretch of the imagination, but he was the
7 key. He was a substantial contributing factor to Shawn's
8 conviction, and if he was a substantial contributing
9 factor to Shawn's conviction and Detective Callahan hid
10 that information and didn't turn it over to the
11 prosecutors in this case, then Shawn's entitled to
12 recover damages for the 15 years he spent in jail.

13 I'm going to ask you at the end of this trial
14 that after 21 years hold Detective Callahan responsible
15 for what he did. Hold him responsible for what he did.
16 Thank you.

17 MR. CURRAN: Your Honor, may we approach
18 sidebar for a minute?

19 THE COURT: All right.

20 (THE FOLLOWING OCCURRED AT SIDEBAR:)

21 MS. HARRIS: Your Honor, I'd place on the
22 record an objection to the extent that Ms. Scapicchio
23 said that Detective Callahan has a burden of proving
24 anything to this jury, which is what I understood her to
25 say, that he has to prove that he disclosed this

1 information. The burden of proof should not ever be put
2 on the defendant in this case. That's why I stood to
3 object.

4 THE COURT: Okay. I said that at the
5 beginning. At the conclusion of your opening, I'll say
6 it again.

7 MS. HARRIS: Thank you.

8 MS. SCAPICCHIO: Thank you.

9 (SIDEBAR CONFERENCE WAS CONCLUDED)

10 MR. CURRAN: May I, your Honor?

11 THE COURT: Yes, of course.

12 OPENING STATEMENT

13 MR. CURRAN: Police misconduct, perjury, that's
14 what we just heard about. When she said how do you trust
15 an investigation with police misconduct and perjury, how
16 do you trust it, you follow the evidence. When you
17 follow the evidence, the evidence leads to one person,
18 Shawn Drumgold who sits right there. You've heard about
19 perjury and Tim Callahan feeding information concerning
20 perjury. Perjury in a murder case carries the penalty of
21 life in prison without the possibility of parole.

22 I want you to consider that when you evaluate
23 the credibility of Tim Callahan and his conduct.

24 Mr. Callahan, please stand up. Thank you.

25 Ladies and gentlemen, I'm Hugh Curran, and I

1 have the honor with Ms. Harris to represent
2 Timothy Callahan. Our civil justice system is the best
3 justice system in the world because of people like you,
4 men and women who bring it to this courtroom when they
5 walk through that door, the life experiences and their
6 common sense who are prepared to wait to hear both sides
7 of the story and all the evidence before they reach any
8 conclusion, any conclusion in this case.

9 I submit to you that there's one agreement, and
10 there's one agreement amongst both parties in this case
11 that Ricky Evans is a liar. It's going to be your job to
12 evaluate Ricky Evans on that stand and evaluate
13 Ricky Evans' testimony throughout the stage of this
14 process, the criminal trial, the motions for new trial
15 and the trial we're here now, Shawn Drumgold vs. Timothy
16 Callahan and the City of Boston.

17 I wish I could tell you what Ricky Evans is
18 going to say when he takes that stand under oath. I wish
19 I could. I wish I could tell you, but you know what, his
20 story changes every day minute by minute. There's one
21 thing that hasn't changed that's consistent. In 1988 and
22 1989, the City of Boston was besieged with violence,
23 record numbers of homicides and shootings and the fact
24 that men and women like Tim Callahan were entrusted to
25 diligently investigate those homicides and bring a

1 conclusion to the families of those victims.

2 On August 19, 1988, Tiffany Moore was living at
3 the time on Humboldt Avenue with her mother. Her mother
4 testified at trial as she had sent her down to
5 South Carolina to live with her sister, and she had
6 returned for a little vacation for a doctor's
7 appointment. The next day she was scheduled to go back
8 to South Carolina.

9 She left her apartment that night to say
10 goodbye to some friends, and she walked out to the corner
11 of Homestead and Humboldt Avenue, and she was with a
12 group of young girls. There were older boys at the
13 corner. She was sitting on a mailbox. Two to three
14 masked men, depending on the description given by the
15 witnesses at the scene, were wearing either a black
16 Adidas running suit or black clothing, and they were
17 masked, and they snuck up along the Edison plant.

18 You will have an opportunity to see the
19 pictures of this crime scene. As they snuck up along the
20 Edison plant, these two to three masked gunmen opened
21 fire on a group of kids near the mailbox.

22 Tiffany Moore had her back to these gunmen.
23 Two bullets entered her back. One struck her in the back
24 of the head killing her. Tiffany Moore became a record
25 number, the 75th homicide in Suffolk County at that

1 time.

2 Now, Ms. Scapicchio has made a lot of
3 accusations. There is one thing that does not change
4 throughout this trial. The plaintiff, Mr. Drumgold, has
5 a burden of proof to prove his case, and she made a lot
6 of promises. I want you to remember that. I want you to
7 write them down because at the end of this trial I submit
8 that she cannot meet that burden.

9 She stated about a witness, Tracie Peaks. I
10 want you to remember because I'm going to touch on this
11 later, she stated that Tracie Peaks testified that
12 Shawn Drumgold came by her house after the shooting and
13 he was wearing a red turtleneck. A red turtleneck.
14 Absolutely not true, never evidence at any time from any
15 witness in any courtroom anywhere in this country.

16 She talks to you about the trial transcript,
17 and she says in the trial transcript, in the trial
18 transcript that you're going to have to listen to all
19 these parts of the trial transcript. She doesn't want
20 you to listen to the evidence and where it led and what
21 caused the conviction. That's why she is highlighting
22 the pain staking process it's going to take to put the
23 trial transcript before you, but that's why we chose each
24 and every one of you because of your patience, because of
25 your intelligence, because of your life experiences to

1 look and evaluate testimony of witnesses on that stand
2 under oath.

3 In October, 1989, Shawn Drumgold and Terrance
4 Taylor stood at trial before 14 men and women, just like
5 you, who had the best ability to evaluate the credibility
6 of the witnesses and the evidence.

7 Ms. Scapicchio failed to tell you a few things.
8 She failed to tell you that on August 19, 1988, Detective
9 Richard Walsh, a seasoned investigator in the Boston
10 Police homicide responded to the scene and he responded
11 to the scene to charge and to report to the Suffolk
12 County District Attorney's Office who was in charge of
13 all homicide investigations.

14 You'll hear by statute and by law, the
15 Suffolk County D.A.'s Office is in charge. For that
16 reason they send an Assistant D.A. out to the scene of
17 every shooting that there is a potential homicide.
18 You'll hear evidence that Matthew King, an Assistant D.A.
19 responded that evening and he assisted Detective Richard
20 Walsh.

21 Detective Richard Walsh gathered evidence at
22 the scene. He interviewed and gathered information from
23 a myriad of detectives and patrolmen. He canvassed the
24 scene of this murder, and he interviewed witnesses from
25 August 19, 1988 to September 8th, the day this case was

1 presented to the grand jury in Suffolk County.

2 Detective Walsh interviewed 15 witnesses,
3 taking recorded statements, some recorded statements
4 within the presence of the assistant district attorney,
5 and he reported his progress in the investigation to the
6 head of homicide, Francis O'Meara, and he kept him
7 informed because the D.A.'s Office was in charge.

8 In October, 1989, when Terrance Taylor and
9 Shawn Drumgold stood before you, Ms. Scapicchio failed to
10 tell you the evidence, the evidence that this was a
11 retaliatory shooting for a young man by the name of
12 Romero Holliday. She failed to tell you that Romero
13 Holliday was in the hospital from his shooting within two
14 weeks of the murder of Tiffany Moore, that a witness,
15 Christopher Cousins, took the stand and testified, and he
16 testified that, "I was in that hospital room.
17 Shawn Drumgold was there and Terrance Taylor, and they,
18 Shawn Drumgold and Terrance Taylor, talked to Romero
19 Holliday about retribution, retribution."

20 You'll read the trial transcripts, and you'll
21 see that the intended targets for this shooting were
22 Mervin Reese and Christopher Chaney. You'll hear
23 evidence that Mervin Reese was at the mailbox within a
24 half hour of the shooting and that Chris Chaney was
25 standing right next to Tiffany Moore.

1 She failed to tell you about
2 Vantrell McPherson, a young woman who knew
3 Shawn Drumgold. She saw Shawn Drumgold about 6:30 that
4 evening. What was he wearing? Black Adidas sweatsuits.
5 Terrance Taylor came up to him, talked and said, "Shawn,
6 you know we have to do this," and off they went down
7 Brookledge Street just a few blocks from the murder of
8 Tiffany Moore.

9 She failed to tell you that seven days after
10 the murder of Tiffany Moore, Detective Richard Walsh had
11 information about two young women who had information
12 about the murder of Tiffany Moore. These two young
13 women, Tracie Peaks and Mary Alexander, lived at
14 72 Homestead Street.

15 The evidence is clear and undisputed that these
16 two to three masked gun men after they shot ran along the
17 Edison plant, climbed over the fence and headed down
18 Homestead Street, two houses away from that lot and that
19 fence where they climbed over lived Tracie Peaks and
20 Mary Alexander.

21 Tracie Peaks and Mary Alexander were in their
22 home when they heard gunshots. Mary Alexander had a
23 young child. Tracie Peaks had a younger sibling who were
24 out on the front porch. They ran to the porch to get
25 these young children. Mary Alexander saw two black males

1 coming over the fence.

2 The evidence is one is short, one tall, one
3 dark-skinned, one light-skinned, and they walked right by
4 her house, as close as I am to that witness stand. She
5 looked at the smaller one, the light-skinned one, and he
6 was putting a gun away in his waistband.

7 Tracie Peaks saw two black males within a
8 minute of the shots fired coming by at the same time.
9 She knew Shawn Drumgold from the neighborhood. She knew
10 Shawn Drumgold's girlfriend's sister, and she recognized
11 Shawn Drumgold. Ten days after Richard Walsh went and
12 showed them a photo array. In the photo array was a
13 picture of Shawn Drumgold. Tracie Peaks identified
14 Shawn Drumgold. When Mary Alexander got to the picture
15 of Shawn Drumgold, she picked it up three times and put
16 it down.

17 She testified at trial, "The detective told me
18 to be 100 percent sure," and she talked about the
19 darkness of the photographs, but what she didn't tell you
20 is strategically Shawn Drumgold's lawyer a couple days
21 before the trial started went out to interview
22 Tracie Peaks who testified that Shawn Drumgold that night
23 was wearing black clothing, a black turtleneck and black
24 pants.

25 When he went out there, he had an 8 by 10

1 glossy photograph of Shawn Drumgold. He wanted to see if
2 she was going to be able to identify him at trial, and
3 she showed the photograph of Shawn Drumgold to
4 Mary Alexander, the woman who testified that the
5 detectives told me to be 100 percent sure, the woman who
6 picked the photograph up three times, and she said,
7 "That's him, that's the young man who came over the
8 fence, came by my house and put the gun in his bulge."
9 What does she testify to at trial? "I'll never forget
10 those eyes. I'll never forget those eyes."

11 Mary Alexander and Tracie Peaks identified
12 Shawn Drumgold in front of the jury. There's another
13 witness, Eric Johnson, one of the young boys who was at
14 the mailbox, he testified, "I ran away and I fell down.
15 I had seen someone get out of a car on Homestead wearing
16 dark clothing, didn't get a good look at him, just the
17 shape of his body. When I hit the ground and got up and
18 started to run, I did look at the shooters. I recognized
19 the shape." At trial he identified Shawn Drumgold.

20 Now, Detective Richard Walsh handled this case
21 and in May to June, beginning June, 1989 Tim Callahan was
22 especially assigned to this investigation. You'll hear
23 evidence a record number of homicides, multiply that with
24 every time there's a potential death or sudden death, the
25 homicide detectives have to go to the scene. There's no

1 question about it, the detectives, homicide detectives in
2 this city were spread thin.

3 The city, in this case, there was a comment,
4 this case, the murder of Tiffany Moore was important to
5 the City of Boston. It was also important to the Boston
6 Police Department, but to the men and women who served in
7 the homicide division, it was no more important than any
8 other case that they handled, no more important than any
9 other homicide because they answer for those families,
10 and they have to go out there and do their job.

11 Now, Tim Callahan, you'll hear testimony, and
12 it's important that you know that when Tim Callahan gets
13 assigned to this case, they want him to follow up on all
14 the leads and all the information that exists and find
15 new information if it exists.

16 You heard reference to Treas Carter, Chilly.
17 Detective Callahan never knew Ricky Evans before
18 December, 1988, a year before. You'll hear testimony
19 about Ricky Evans and his cousin Willie being on Elm Hill
20 Ave., a block from where Tiffany Moore was murdered, and
21 how they were on the street together, a New York drug
22 dealer by the name of Chilly.

23 Why? It's the temperature of the blood in his
24 veins, pulled him off the street at gun point with two of
25 his henchmen, and he brought Ricky Evans up into an

1 apartment on Elm Hill Ave. because he thought that Ricky
2 either did rip him off or was going to rip him off, and
3 he put Ricky and his cousin Willie next to each other in
4 this apartment, took out his gun, put it to the back of
5 Willie's head, pulled the trigger and blew his head off.

6 He then took the gun and turned to Ricky, and
7 he shot, Ricky put up his hand, and it got deflected on
8 his hand, it took off a piece of his ear, and he fell to
9 the ground and he played posse. The gunman walked over,
10 put the gun to the back of his head, pulled the trigger,
11 and it jammed, and they ran out. Chilly and his two
12 henchmen ran out.

13 Detective Callahan visited him in the hospital,
14 worked with him and his homicide team and knew him by
15 name. They did good police work. They found out there's
16 a Chilly in New York, a drug dealer. They put together a
17 photo array. They interviewed other witnesses that knew
18 him and described him. Ricky Evans picked out the photo
19 of Chilly. He knew Chilly from the neighborhood, knew
20 who he was. He left the hospital, and you'll hear
21 testimony, he got out of that area.

22 Ricky was into everything, and you'll hear that
23 from him, dealing drugs, doing things, and he got out.
24 He got out because he knew if he kept, stayed there, he
25 wouldn't last long.

1 Now, Detective Callahan works with Ricky, meets
2 with him. On May 24th, Ricky Evans testified before the
3 grand jury. You'll hear evidence from Paul Connolly and
4 from Tim Callahan that Paul Connolly was assigned to this
5 murder case, assistant district attorney with years of
6 experience, previously a criminal defense lawyer, and
7 they worked together to bring justice to Ricky Evans and
8 Willie Evans. Treas Carter was arrested, indicted and
9 was awaiting trial in Suffolk Superior Court, and these
10 cases were running parallel. They had the same track.
11 They were both scheduled for trial in September of 1989.
12 There's a lot of allegations here about Tim Callahan and
13 what he did with Ricky Evans.

14 Now is the right time for you to know about
15 Tim Callahan, and the reason you should know about
16 Tim Callahan, he's a man, a person, just like you and me.
17 I invite you to evaluate his credibility, and, yes, the
18 credibility of Ricky Evans. We encourage you.
19 Tim Callahan is 62 years old, happily married for 26
20 years, five children between the ages of 16 and 26. Do
21 the math. He had three young kids at the time he
22 investigated this case on a public servant salary, and
23 they want you to believe that he was a human ATM for
24 Ricky Evans.

25 I submit you will find that not to be credible

1 at all. Tim Callahan born and raised in the city and
2 educated in the city, graduated in 1971 from Northeastern
3 University. He joined the police department in 1970
4 after serving for a year on the MBTA police department.
5 He took an oath to protect and serve the citizens of this
6 city, and he did so admirably for 34 years.

7 During the course of his career, he continued
8 his education. In 1980, he got a master's from Boston
9 State College in urban planning. In 1988, he went to law
10 school, and he received a law degree in 1993. I submit
11 to you that Tim Callahan pursued this education because
12 he believed in this city, community policing and he
13 wanted to improve himself not only as a person but also
14 as a police officer.

15 In 1989, when he investigated this case, he
16 brought a wealth of experience and training. In the
17 1970s, he was promoted to detective. He has served on
18 almost every single position in the Boston Police
19 Department. He served as a detective in the intelligence
20 unit. He served as a detective in the vice control,
21 organized crime, prostitution, sexual assault unit, and
22 the homicide division.

23 He took competitive civil service exams to
24 advance. In the 1980s, he was named as a sergeant. Then
25 in 1993, from '88 to '93 he served in homicide; in 1993,

1 he was promoted to lieutenant. From 1970 until his
2 retirement in 2005, he was in the reserves, Army
3 Reserves. He served this country for 25 years, 35 years.
4 He was deployed on two occasions to the Middle East, the
5 last time in 2003.

6 Tim Callahan will take that stand, and I
7 encourage you to evaluate his testimony. He will tell
8 you in 2003, when he was called to testify, he didn't
9 have the benefit of reviewing all of his file. He didn't
10 have the benefit of the Treas Carter file either. After
11 he testified, he had that opportunity and he reviewed it.
12 He reviewed it and he saw things that he forgot about.

13 Now, Ricky Evans, in this case, let's not
14 forget, that's what it's about, it's about Ricky Evans
15 vs. Timothy Callahan. That's what it's about, all right.
16 Ricky Evans, when Tim Callahan took over this case in the
17 end of May, beginning of June, he will tell you that he
18 reviewed the file, the Drumgold file. He had assigned a
19 patrolmen who had knowledge of that area, a detective,
20 and that detective was assigned to him, and they
21 continued to investigate the case, unfortunately had to
22 respond to other calls, had to testify at other trials,
23 had to deal with other cases as well.

24 From May of 1989, until this trial, he
25 interviewed 45 witnesses, and he conducted numerous tape

1 recorded statements where he and his detective, a
2 partner, will interview a witness. He will also tell you
3 that he worked closely with the Assistant D.A. in both
4 the Treas Carter case, Paul Connolly and Phil
5 Beauchesne.

6 Now, in June, after the grand jury, the
7 Treas Carter case, Ricky Evans calls him or Timmy called
8 Ricky Evans. They're having a conversation. Like a good
9 detective who knows that Ricky Evans, who lived in the
10 area, a block away from the murder, who was out there in
11 the streets and active, like any good detective, he asked
12 him, "What did you hear? What did you see? What do you
13 know?" Ricky Evans started to talk, and when he started
14 to talk, Timothy Callahan will tell you he hears a voice
15 in the back, "Don't talk to the police."

16 Ricky hangs up. He eventually called Detective
17 Callahan back. Detective Callahan talks to him on the
18 phone, and he tells him what he knew. What does
19 Detective Callahan do? He immediately calls Assistant
20 D.A. Phil Beauchesne, and on June 21st,
21 Detective Callahan brings Ricky Evans in to meet with
22 Phil Beauchesne. We know that because there was a report
23 drafted. We don't have that report because it's been
24 lost by the D.A.'s Office. It's contained in the
25 records.

1 MS. SCAPICCHIO: Objection, your Honor.

2 THE COURT: Objection, ladies and gentlemen,
3 there's an objection to the facts as presented by
4 counsel. You understand that the facts will be yours to
5 determine, so neither side is giving the version of the
6 facts that you ought to accept. It will be their
7 versions. You have to decide if the evidence supports
8 it. Go on, counsel.

9 MR. CURRAN: You'll hear evidence in the trial
10 transcript there's a reference to the June 21st report.
11 We don't have it; either do they. It would be your
12 decision to find out what happened to it.

13 After June 21st, and Phil Beauchesne knew about
14 Ricky Evans, Ricky Evans is brought back on August 6th,
15 he was brought back on August 6th to the D.A.'s Office,
16 and he gave a tape recorded statement, a tape recorded
17 statement about what he knew.

18 What Ms. Scapicchio failed to tell you is that
19 the discovery obligations in any criminal case starts and
20 stops with the D.A.'s Office, the D.A.'s Office are the
21 ones that marshal the information, then they determine
22 what information, if any, is turned over to the
23 defendant. The police obligation is to report to the
24 D.A.'s, and that's what Tim Callahan did.

25 Now, you're going to hear evidence that on

1 September 12th, two weeks before the Tiffany Moore murder
2 and a couple weeks before Treas Carter was scheduled for
3 trial that Tim Callahan got a call from Ricky Evans.

4 Ricky Evans was bouncing around from his
5 girlfriend's house to his stepmother's house, to his
6 brother's house, was all over the place. He got a call
7 that they found him, that an investigator by the name of
8 Larry Fallon found him in Dorchester and went to his
9 house.

10 Now, Ricky claims that Fallon made some
11 statements to him, "It's not too late to change your
12 mind," things of that nature. He was spooked, called
13 Callahan, said, "Where I'm staying they won't let me stay
14 here anymore," so Detective Callahan, like any good
15 detective, got right to where he was on September 12th,
16 spoke to him, he had to make a quick decision, which he
17 made, and he took Ricky Evans to a hotel for two reasons,
18 to ensure that this witness is going to be available for
19 the two upcoming murder cases that he's a witness on, and
20 also for safety reasons.

21 You're going to hear a lot of testimony about
22 that. You're going to hear from Paul Connolly. Paul
23 Connolly's going to tell you, and he's going to have the
24 luxury of a memo he wrote and put in the file, and he's
25 going to tell you, "I don't remember the specifics, but I

1 remember that we, the district attorney's office,
2 relocated Ricky Evans to a hotel. We, the district
3 attorney's office, relocated Ricky Evans to a hotel," and
4 he's going to tell you that there were some friends
5 visiting Ricky Evans' family members. He's going to say,
6 I put that word in facetiously, and he's going to tell
7 you there was a safety and security issue, that the
8 D.A.'s Office knew.

9 Unfortunately you're not going to have the
10 luxury of having Phil Beauchesne, the trial prosecutor,
11 here because of an illness, but you're going to have the
12 luxury of his testimony at the previous hearing in 2003,
13 and he's going to say, "I tried a lot of cases, 19 years
14 ago is a long time, but I have a memory of putting him in
15 the hotel." You're going to hear from Detective Callahan
16 that that night he went to his supervisors and then he
17 told the D.A. that he put Ricky Evans in the hotel.

18 He made a lot of hay about defense attorneys
19 not being able to cross-examine Ricky Evans on the hotel
20 issue, and I'd submit to you, and I'd ask you to
21 evaluate, do you really think that a seasoned criminal
22 defense attorney is going to cross-examine Ricky Evans
23 about being in a hotel and why if there were safety and
24 security reasons? Wouldn't you think the inference would
25 be drawn that he might not have gotten here because of

1 the defendants in this case vs. Treas Carter?

2 MS. SCAPICCHIO: Objection, your Honor.

3 MR. CURRAN: You heard a lot of other issues.

4 THE COURT: The same instruction with respect
5 to this. Go on. Mr. Curran, you only have a few more
6 minutes.

7 MR. CURRAN: I understand, your Honor, I'm
8 wrapping up. You're going to hear a lot of other
9 evidence about Ricky Evans. Tim Callahan is going to get
10 on that stand and say, "That night when I put Ricky Evans
11 in the hotel, he had no money for food and he only had
12 the clothing on his back. I gave him \$20." Is a police
13 officer not supposed to be human? I can tell you this,
14 he never gave Ricky Evans the money that he claims he
15 gave him like a human ATM, and he didn't give him that
16 \$20 to induce any testimony.

17 You're going to hear a lot about Ricky Evans
18 that the detectives made his cases go away. Absolutely
19 false. He took the stand at the last hearing and claimed
20 that he went out with Detective Callahan, not McDonough,
21 Detective Callahan went into the probation in Roxbury
22 District Court where he had cases pending, he never even
23 went into a courtroom, never went in to see a Judge,
24 never saw probation, and that poof, all his cases went
25 away.

1 When we move back and you look at the docket
2 and you look at the trial testimony and he says, "I had
3 my default removed," and you'll see the docket, "I got my
4 defaults removed prior to the trial, that was disclosed
5 to the other side, and I'm scheduled to go back there
6 October 18th after the trial."

7 He went back October 18th, and you're going to
8 see the cases, trespass, possession, and you'll hear
9 testimony about those types of cases in Roxbury District
10 Court, the normal dispositions, dismissed on court costs,
11 community service, continued without a finding, and
12 that's what he got.

13 I want to thank you in advance for the patience
14 and the attention that you're going to give not only to
15 Tim Callahan and to his lawyers but Shawn Drumgold and
16 his lawyers but also to the Judge. I am confident after
17 you've had the ability to hear all the evidence and then
18 let Judge Gertner instruct you on the law that when you
19 have then heard all the evidence and let Judge Gertner
20 instruct you on the law pertaining to this case that you
21 will find that Shawn Drumgold had a fair trial and that
22 Tim Callahan did not violate any of his constitutional
23 rights. Thank you.

24 THE COURT: We'll take a brief morning break,
25 ladies and gentlemen. All rise for the jury. We'll be

1 back at noon. Have your coffee break, snacks. Leave
2 your notes, please, on your chair. This is a time not
3 for discussion of the case, this is just to have a coffee
4 break. Go on.

5 (A recess was taken.)

6 THE CLERK: All rise for the jury.

7 THE COURT: You can be seated. Call your first
8 witness.

9 MS. SCAPICCHIO: Thank you, your Honor.
10 Plaintiff calls Ricky Evans.

11 RICKY LEE EVANS, having been duly sworn by
12 the Clerk, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. SCAPICCHIO:

15 Q. Good afternoon, Mr. Evans.

16 A. Good afternoon.

17 Q. In a loud, clear voice, can you please state your
18 name for the jurors and the Court.

19 A. Ricky Lee Evans.

20 Q. Could you spell your last name, Mr. Evans?

21 A. Evans, E-v-a-n-s.

22 Q. How old are you, Mr. Evans?

23 A. Forty.

24 Q. Do you have any children?

25 A. Yes.

1 Q. How many children do you have?

2 A. Two.

3 Q. How old are they?

4 A. 21 and 11.

5 Q. Do you have boys or girl?

6 A. One boy, one girl.

7 Q. And is your daughter 21?

8 A. Yes.

9 Q. And how old is your son?

10 A. Eleven.

11 Q. Okay. And where do you currently live, Mr. Evans?

12 A. Long Island Transitional Housing.

13 Q. Say that again.

14 A. Long Island Transitional Housing.

15 Q. Long Island Transitional Housing?

16 A. Yes.

17 Q. Is that a shelter?

18 A. Yes.

19 Q. How long have you lived at Long Island Transitional
20 Shelter?

21 A. Two months.

22 Q. And I'm going to direct your attention, Mr. Evans,
23 back to December of 1988. Were you the victim of a crime
24 in December of 1988, Mr. Evans?

25 A. Yes.

1 Q. Can you tell the jury what crime you were a victim
2 of?

3 A. I was shot, and my cousin was killed.

4 Q. Okay. Let me just take that in small pieces, if you
5 don't mind. Could you tell the jury first where you were
6 living back in 1988.

7 A. Elm Hill.

8 Q. Elm Hill?

9 A. Yes.

10 Q. And what section, is that in Boston?

11 A. Yes.

12 Q. And what section of Boston is Elm Hill?

13 A. Grove Hall.

14 Q. Grove Hall?

15 A. Yes.

16 Q. And had you grown up in the area of Grove Hall?

17 A. Yes.

18 Q. And did you live in that area prior to 1988?

19 A. Yes.

20 Q. Let me ask you this, when you say you grew up in the
21 Grove Hall area, do you have brothers and sisters?

22 A. Yes.

23 Q. And do they live or did they live in the Grove Hall
24 area in 1988?

25 A. Yes.

1 Q. Okay. Now, directing your attention to December of
2 1988, you had indicated that you were the victim of a
3 crime, a shooting; is that right?

4 A. Yes.

5 Q. Okay. Can you tell the jurors where you were when
6 you were shot and your cousin was killed?

7 A. I was up at actually we went up at 118 Elm Hill.

8 Q. 118 Elm Hill Ave.?

9 A. Yes.

10 Q. And that's in Roxbury?

11 A. Yes.

12 Q. Grove Hall area?

13 A. Yes.

14 Q. Can you tell the jurors what happened in that case
15 when you were a crime victim?

16 A. Yes.

17 Q. Could you explain that to them, Mr. Evans?

18 A. What happened that night?

19 Q. What happened that night that you got shot and your
20 cousin was killed?

21 A. Me and my cousin, we were standing at 118 Elm Hill on
22 the first staircase, and three guys walked in the
23 hallway, so we saw the guys a couple times before walking
24 on the street, so we didn't think anything of it, so they
25 walked in the hallway where we was at, and one of them

1 had grabbed my cousin, Roy, and had put a machine gun to
2 his back, and one of the other guys had put a
3 semiautomatic out and put it to my back, and they brought
4 us out the hallway from 118 Elm Hill, and they walked us
5 from 118 across Sonoma Street down four more buildings up
6 to the second floor.

7 Q. Do you know what building you went into on the second
8 floor, Mr. Evans?

9 A. Yes, 102 Elm Hill.

10 Q. 102 Elm Hill?

11 A. Yes.

12 Q. When you say you went in, who was there?

13 A. It was me, Roy, my cousin and three guys, the one
14 that did the shooting.

15 Q. Okay. What happened when they brought you to 102 Elm
16 Hill Ave.?

17 A. They put up to the second floor and pushed us inside
18 the apartment.

19 Q. And did you say they pushed you inside an
20 apartment?

21 A. Yes.

22 Q. Were you taken at gun point at that point?

23 A. Yes.

24 Q. And that was by three people?

25 A. Yes.

1 Q. Okay. Can you tell the jurors what happened next?

2 A. They pushed us inside the apartment of the second
3 floor at 102, and Roy was standing by the door. He was
4 standing by the door 'cause when you open the door, it
5 opens up, like it comes in, so after they pushed us
6 inside the apartment, one of the guys was standing, he
7 was holding Roy, and my back was like facing the door,
8 and my back was facing like a room door there, and I
9 looked at Roy -- no, the guy that had the gun to Roy's
10 head, I looked over my shoulder to these girls that were
11 standing behind me.

12 Q. Can you slow down a minute. You said that there was
13 a guy that had a gun to Roy's head?

14 A. Yes.

15 Q. And that guy was directly behind you?

16 A. No, there were two girls behind me that lived in the
17 apartment --

18 Q. Okay.

19 A. -- that was standing behind me.

20 Q. What happened next?

21 A. And so the guy looked over my shoulder, and he asked,
22 he was like, "Are these the ones?" And I don't know what
23 she said behind my back, but by this time, me and Roy, we
24 were at least two feet from each other, and I looked at
25 Roy, and the next thing you know, I seen his brains come

1 out of the side of his head.

2 Q. When you say you saw his brains come out of the side
3 of his head, what happened to Roy?

4 A. The guy shot Roy and shot him in the head.

5 Q. Somebody shot him in the head?

6 A. Yes.

7 Q. Did you know the person that shot your cousin Roy in
8 the head?

9 A. Yes.

10 Q. What was his name, Mr. Evans?

11 A. Chilly, Chilly Carter.

12 Q. Chilly Carter?

13 A. Chilly.

14 Q. After that what happened?

15 A. He ran, he ran after he shot Roy, and Roy fell in
16 between in front of the door. He ran up to me, he ran up
17 to me, and he was about a foot away from me, and he threw
18 the gun to my forehead, and he had pulled the trigger,
19 and when he pulled the trigger, I threw up my hand like
20 this, and the bullet entered my left hand and shattered
21 my finger, the second finger, and it ricocheted it off
22 this finger here.

23 Q. When you say this finger here, can you tell the
24 jurors which finger that is?

25 A. Middle finger.

1 Q. Okay.

2 A. And it ricocheted off that bone and came up the back
3 of my head right there and it tore off a piece of my
4 ear.

5 Q. And as a result of being shot, did something happen
6 to you? Did you fall down?

7 A. Yes, I fell, and the guy walked -- when I fell, I
8 fell backwards, and I laid -- I landed on my stomach, and
9 the guy walked up behind me and put the gun to the back
10 of my head and tried to pull the trigger, but the gun had
11 jammed.

12 Q. Slow down for one minute. After you were shot in the
13 head and you put your hands up to protect yourself, then
14 you fell down, there was somebody who came and tried to
15 shoot you again?

16 A. Yes.

17 Q. Okay. And at that point did you say that the gun
18 jammed?

19 A. Yes, the gun jammed.

20 Q. And then what's the next thing you remember
21 happening?

22 A. The next thing I remember, I hear them running out
23 the -- one of the guys yelled to the other guy, "Come on,
24 let's go," and by this time they had moved Roy, the other
25 two guys had moved Roy out from in front of the door, and

1 the guy Chilly, the one that did the shooting, he had ran
2 out behind him, had ran down the hall and ran down the
3 downstairs.

4 Q. And as a result of being shot yourself and your
5 cousin Roy being shot, did the police respond to
6 102 Elm Hill Ave.?

7 A. Yes.

8 Q. And were you taken somewhere as a result of your
9 injuries?

10 A. I was taken to Boston Medical Center.

11 Q. Okay. And when you were at the Boston Medical
12 Center, Mr. Evans, did members of the Boston Police
13 Department come to talk to you?

14 A. Yes.

15 Q. Okay. And did you cooperate with them?

16 A. Yes.

17 Q. Okay. And at some point were you released from the
18 Boston Medical Center?

19 A. Yes.

20 Q. And did you have to have any operations or do you
21 remember how long you were there?

22 A. I think I left the next day.

23 Q. You left the next day?

24 A. Yes, the next day or the day after that.

25 Q. And at that point in time, you had given your name to

1 the police; is that right?

2 A. Yes.

3 Q. Okay. And you had cooperated with them about who had
4 shot you and who had shot your cousin; is that right?

5 A. Yes.

6 Q. Okay. Now, at some point after that first night, did
7 you meet Detective Tim Callahan?

8 A. Yes, after that, yes.

9 Q. Can you tell the jury when it was you first met
10 Detective Timothy Callahan?

11 A. It was about going -- it was about the investigation
12 with me and my cousin.

13 Q. Okay. So you met him in conjunction -- was he one of
14 the detectives that was working on your shooting?

15 A. Yes.

16 Q. And you were a victim in that case; is that right?

17 A. Yes.

18 Q. Okay. And so when you first met Detective Callahan,
19 were you talking to him about your experience as a victim
20 in the Treas Carter case?

21 A. Yes.

22 Q. Okay. And do you remember when you met with
23 Detective Callahan whether or not you were ever shown --
24 well, in conjunction with the Treas Carter case, were you
25 ever shown any photographs? Do you remember being shown

1 photographs?

2 A. Of Treas Carter, yes.

3 Q. Do you remember picking out a photo?

4 A. Yes.

5 Q. Whose photo did you pick out, Mr. Evans?

6 A. Treas Carter, Chilly.

7 Q. And when you picked out that photo, do you remember
8 whether or not you signed it?

9 A. I don't remember.

10 Q. Okay. And that was when Detective -- do you remember
11 whether or not it was Detective Callahan who was working
12 on the case or not working on the case?

13 A. Yes, Mr. Callahan was there that night.

14 Q. After you picked out Treas Carter's picture, did you
15 testify in front of the grand jury on the Treas Carter
16 murder case?

17 A. I think I did, yes.

18 Q. Okay. And was Detective Callahan working on the case
19 at that time?

20 A. Yes, I think he was.

21 Q. Okay. And the time that you got shot is some time
22 around December of 1988; is that right?

23 A. Yes.

24 Q. And from December of '88 through June of '89, were
25 you working together with Detective Callahan in

1 conjunction with the Treas Carter case?

2 A. Yes, I think so.

3 Q. Okay. And did you respond when they called you to
4 talk about the case or things like that?

5 A. Yes.

6 Q. Okay. And in conjunction with the Treas Carter case,
7 when you left the hospital that day, do you remember
8 anyone from the Boston Police Department ever asking you
9 if you wanted to stay at a hotel or if you needed any
10 protection as a result of the Treas Carter case?

11 A. No.

12 Q. Do you remember, Mr. Evans, as a result of your
13 cooperation in the Treas Carter case whether or not
14 Detective Callahan ever gave you any money?

15 A. After the Treas case?

16 Q. Yes.

17 A. Afterwards?

18 Q. No, no, no, while he was working on the Treas Carter
19 case and before the Tiffany Moore case, did
20 Detective Callahan give you any money when you were just
21 dealing with the Treas Carter case?

22 A. No, I don't remember. I don't remember it.

23 Q. He didn't give you any money?

24 A. I don't recall at the time.

25 Q. Okay. Now, do you remember when you were working on

1 the Treas Carter case and when you were a victim in the
2 Treas Carter case when Detective Callahan was
3 investigating that case, do you remember Detective
4 Callahan making any promises to you regarding any of your
5 pending cases on the Treas Carter case?

6 A. No.

7 Q. Okay. Now, at the time that you were shot, Ricky,
8 you had some other outstanding problems with the law; is
9 that fair to say?

10 A. Yes.

11 Q. Did you have some pending cases in the Roxbury
12 District Court?

13 A. Yes.

14 Q. Do you remember what types of cases you had in the
15 Roxbury District Court back in December of 1988?

16 A. I think it was stolen property. I don't remember all
17 of them.

18 Q. Okay. Do you remember that you had a number of cases
19 pending at the Roxbury District Court back in December of
20 1988?

21 A. Yes.

22 Q. And in conjunction with you being a victim in the
23 Treas Carter case and Detective Callahan working on that
24 case, did Detective Callahan ever make any promises to
25 you about assistance on your pending cases in Roxbury

1 when you were just dealing with the Treas Carter case?

2 MS. HARRIS: May I object to the leading, your
3 Honor?

4 THE COURT: Sustained.

5 Q. Well, let me ask you this, when you were talking to
6 Detective Callahan about the Treas Carter case, did he
7 ever promise you anything?

8 MS. HARRIS: Objection.

9 THE COURT: Overruled.

10 A. No.

11 Q. But you still had the pending cases at the time; is
12 that right?

13 A. Yes.

14 Q. Now, some time in June of 1989 -- well, let me ask
15 you this, when do you remember first speaking to
16 Detective Callahan about the Tiffany Moore murder?

17 A. I think it was on Chaney Street.

18 Q. At 40 Chaney Street?

19 A. Yes.

20 Q. And what do you remember about that conversation? Do
21 you remember, first of all, whether or not it was in
22 person or on the phone?

23 MS. HARRIS: Objection.

24 THE COURT: Overruled.

25 A. It was in person.

1 Q. It was in person?

2 A. Yes.

3 Q. And what do you remember Detective Callahan saying to
4 you, if anything, about the Tiffany Moore case?

5 A. What I can remember is he was at 40 Chaney one day,
6 and he hold up some pictures, and the pictures consisted
7 of Shawn Drumgold, I think Terrance Taylor, I'm not too
8 sure and four other guys.

9 Q. Let me stop you there, Mr. Evans. I'm talking about
10 the very first time that you had any conversation with
11 Detective Callahan regarding the Tiffany Moore murder.

12 MS. HARRIS: Objection.

13 THE COURT: Overruled. Go on.

14 Q. Do you ever remember -- first of all, do you have a
15 memory of the very first time you spoke to Detective
16 Callahan about the Tiffany Moore case?

17 A. I think it was on 40 Chaney Street, yes.

18 Q. And with respect to your conversation with Detective
19 Callahan, do you ever remember having a conversation with
20 him on the phone about Tiffany Moore and someone in the
21 background yelling, "Don't talk to the cops"?

22 MR. ROACHE: Objection.

23 MS. HARRIS: Objection.

24 THE COURT: Overruled.

25 Q. Do you have a memory of that ever happening?

1 A. I don't remember.

2 Q. You don't remember that happening?

3 A. No.

4 Q. Okay. Now, at some point in time, when you
5 began -- was there a time you began to speak to Detective
6 Callahan about the Tiffany Moore murder?

7 A. I think it was on Chaney Street.

8 Q. Okay. And with respect to the photographs, I think
9 you said there was a photograph of Shawn Drumgold, you
10 think there was a photograph of Terrance Taylor, and do
11 you remember a third person being in that photo array?

12 A. I remember there was six photos.

13 Q. Not the Chilly Carter one, we're talking about the
14 Shawn Drumgold.

15 MR. ROACHE: Objection.

16 THE COURT: Rephrase the question.

17 Q. Sure. Do you remember ever being shown a photograph
18 of Theron Davis?

19 MS. HARRIS: Objection. Your Honor.

20 A. Yes.

21 THE COURT: Overruled, go on.

22 Q. Do you remember Detective Callahan showing you a
23 photograph of Theron Davis?

24 A. Yes.

25 Q. Okay. And do you remember together with the

1 photograph of Theron Davis I think you told us there was
2 a photograph of Shawn Drumgold and a photograph of you
3 think Terrance Taylor; is that right?

4 A. Yes.

5 Q. Okay. And can you tell the jury what conversation
6 you had with Detective Callahan when he pulled out those
7 three photos and told you -- well, what conversation did
8 you have about them?

9 A. Yes. He was in the park one day, one night, and he
10 asked me if I could pick out the person that did the
11 shooting on Tiffany Moore, and I told him that everybody
12 in the neighborhood, you know, said it was, you know,
13 Theron.

14 Q. And who was Theron?

15 A. Apple.

16 Q. And he was one of the photographs that were in the
17 three photographs?

18 A. Yes.

19 Q. Okay.

20 A. And he -- it was like he was possessed with
21 Shawn Drumgold because, I mean, I picked out Apple's
22 photo.

23 Q. Hold on right there. When he put the three photos
24 down and asked you whether or not you recognized anyone
25 or what you knew about them, is it your testimony that

1 you told him everybody in the neighborhood said
2 Theron Davis did it?

3 MS. HARRIS: Your Honor, objection.

4 MR. ROACHE: Your Honor, sidebar, please.

5 THE COURT: No. Go on.

6 Q. And what was Detective Callahan's reaction to you
7 when you pointed to the picture of Theron Davis and said
8 that's the person that everybody in the neighborhood said
9 committed this homicide?

10 A. He was like the only person that he wanted to hear
11 about was Mr. Drumgold. He didn't want -- it was like he
12 didn't want to hear anything about Apple, he wanted to
13 finger Shawn.

14 Q. Okay. Let me ask you not what your opinion was about
15 what Detective Callahan did, but tell me physically what
16 he did to make you come to the conclusion that he wanted
17 you to pick out Shawn Drumgold. What did
18 Detective Callahan do, if anything?

19 A. I don't recall.

20 Q. Okay. When he showed you those three photographs and
21 you pointed to the photograph of Theron Davis, do you
22 remember any conversation that you had with
23 Detective Callahan?

24 A. Not that I recall.

25 Q. Okay. When you told him it was Theron Davis, you

1 told us that you said he wanted -- he was possessed?

2 A. Because --

3 MS. HARRIS: Objection. Is there a question?

4 THE COURT: There's no question. Sustained.

5 Put a question to him.

6 Q. You said he was possessed. What did he do to make
7 you come to the conclusion that he was possessed with
8 Shawn Drumgold?

9 A. I showed him the picture of Theron that was on the
10 table, and I said, "This is the picture everybody in the
11 neighborhood is saying that did the shooting," and he was
12 like, "I don't think so. If I'm correct," he was like,
13 "I don't think, this is the picture here." He kept
14 pointing at the picture of Shawn.

15 Q. Stop right there. So when you told him that this is
16 the guy, Theron Davis, that everyone in the neighborhood
17 is saying committed this homicide, you recall
18 Detective Callahan pointing to Shawn Drumgold's
19 photograph?

20 A. Yes.

21 Q. And what do you recall him saying about
22 Shawn Drumgold's photograph?

23 A. I don't actually remember what he said. I don't
24 remember word for word what he said.

25 Q. Did you just tell us you thought he said something

1 along the lines of, "This is the guy who did it"?

2 MR. ROACHE: Objection.

3 A. He was pointing --

4 THE COURT: Wait, wait. When there's an
5 objection, you don't answer. There's an objection. Can
6 you rephrase the question? I understand the objection.
7 Go on.

8 Q. Sure. What made you believe or come to the
9 conclusion that -- what physically did Detective Callahan
10 do to Shawn Drumgold's picture to draw it to your
11 attention at that time?

12 A. He pointed at it.

13 Q. He pointed at it?

14 A. Yes.

15 Q. And when Detective Callahan pointed at the photograph
16 of Shawn Drumgold, what's your best memory of what
17 Detective Callahan said?

18 A. I don't remember. I don't recall the conversation.

19 Q. Okay. After Detective Callahan said whatever he
20 said, did you have some understanding of what
21 Detective Callahan, why Detective Callahan was pointing
22 at that picture?

23 MS. HARRIS: Objection.

24 MR. ROACHE: Objection.

25 THE COURT: Sustained.

1 Q. Well, let me ask you this: Did you talk again to
2 Detective Callahan about Theron Davis?

3 A. About Theron, I think I did, but I'm not sure.

4 Q. Okay. After Detective Callahan pointed to the
5 photograph of Shawn Drumgold and after he made whatever
6 comment he made that you can't remember, do you have a
7 memory, sir, of whether or not you went somewhere
8 different? It's a bad question. Let me start again.
9 After Detective Callahan pointed to the photograph of
10 Shawn Drumgold, did you have any further discussion with
11 him about the murder of Tiffany Moore and
12 Shawn Drumgold's alleged involvement?

13 A. Alleged involvement?

14 Q. At that time?

15 A. Not that I can remember, no.

16 Q. So was there another occasion where you had some
17 conversation with Detective Callahan about
18 Shawn Drumgold's involvement?

19 A. I can remember he had mentioned to me about Shawn, he
20 was in a white car.

21 Q. In a white car?

22 A. Yes.

23 Q. Okay. Let me back you up for one second because it's
24 probably getting confusing. You testified at the
25 criminal trial in this case; do you remember that?

1 A. Yes.

2 Q. And you testified, according to the transcript, that
3 you saw Shawn Drumgold prior to the murder of
4 Tiffany Moore together with Terrance Taylor; do you
5 remember that testimony?

6 MS. HARRIS: Objection.

7 A. Yes.

8 THE COURT: Overruled.

9 Q. Okay. And did you ever see Shawn Drumgold together
10 with Terrance Taylor prior to the murder of
11 Tiffany Moore?

12 A. No.

13 Q. And you testified at the criminal trial that you saw
14 Shawn Drumgold in a white car. Back on August 19th of
15 1988, did you ever see Shawn Drumgold in a white car in
16 August of 1988?

17 A. No.

18 Q. Where did you get the information, Mr. Evans,
19 regarding Shawn Drumgold in a white car?

20 MS. HARRIS: Objection.

21 THE COURT: Overruled.

22 A. I received it from Mr. Callahan.

23 Q. What do you mean you received it from Mr. Callahan?

24 A. He would say things, but he would say things around
25 me but he wouldn't say directly like, for instance, about

1 the white car, he said Shawn must have been driving the
2 white car.

3 Q. So, in front of you Detective Callahan said Shawn and
4 Terrance were in a white car?

5 A. Yeah.

6 Q. And that was on the night of -- referring to the
7 night of August 19, 1988?

8 A. Yes.

9 Q. Okay. And where did these conversations take place,
10 Mr. Evans?

11 A. I think it was on 40 Chaney Street. I'm not sure.

12 Q. At some point did you move from 40 Chaney Street to
13 the Howard Johnson's?

14 A. Yes.

15 Q. Okay. And was that some time after you began
16 discussing the Tiffany Moore murder?

17 A. Yes.

18 Q. And the photographs with Detective Callahan?

19 A. Yes.

20 Q. Okay. So, some time after Detective Callahan showed
21 you those three photos and some time after you had
22 discussions about the white car with Detective
23 Callahan?

24 MS. HARRIS: I object to the leading, your
25 Honor.

1 THE COURT: Sustained. Actually, overruled.
2 You can situate this and then ask a question.

3 MR. CURRAN: Can we get some time frames,
4 Judge, as opposed to after?

5 Q. I don't know the exact time frame. Let me clear this
6 up. Some time after you had the conversations with
7 Detective Callahan about the photos and some time after
8 you had the conversations with Detective Callahan about
9 Shawn being in a white car, did you arrive at the
10 Howard Johnson's?

11 A. Not right afterwards.

12 Q. Okay. But how long -- can you give us a time frame
13 how long after you started to talk about the
14 Shawn Drumgold case with Detective Callahan and he was
15 giving you that information that you ended up at the
16 Howard Johnson's?

17 A. When I moved from Elm Hill, I moved to Dorchester.

18 Q. Okay.

19 A. And I had a few conversations with Callahan during
20 that time, but I don't remember what the conversation was
21 about.

22 Q. That's not the question, it was probably a poor
23 question. I'm just trying to find in reference to the
24 time Callahan showed you those three photos and pointed
25 to Shawn's photo and said, "This is the guy" and then he

1 told you about the white car, do you know how long after
2 that you ended up at the Howard Johnson's?

3 A. Not long.

4 Q. Not long, okay.

5 A. Not long.

6 Q. Was it a matter of days, was it a matter of weeks, do
7 you know?

8 A. It could have been a week.

9 Q. Okay.

10 A. Could have been a week. I'm not sure.

11 Q. And at the time that you went to the
12 Howard Johnson's, how did you get there? Who brought you
13 there?

14 A. Mr. Callahan.

15 Q. And at the time that Mr. Callahan brought you to the
16 Howard Johnson's, did you have a place to live before he
17 brought you to the Howard Johnson's?

18 A. No.

19 Q. Where were you living at that time?

20 A. At that time I was sleeping wherever I possibly
21 could.

22 Q. You were sleeping wherever you possibly could?

23 A. Yes.

24 Q. And do you remember any of the places you were
25 sleeping back in 1989 before you went to the

1 Howard Johnson's?

2 A. I was just staying anywhere I could stay. I didn't
3 have a specific place to stay.

4 Q. Okay. And when you got to the Howard Johnson's with
5 Detective Callahan, did you get a room?

6 A. Yes.

7 Q. Did you pay for it?

8 A. No.

9 Q. Do you know who did?

10 A. No.

11 Q. Okay. Who signed you into the hotel?

12 A. Mr. Callahan.

13 Q. And do you remember where your room was?

14 A. It was on the fifth floor.

15 Q. On the fifth floor?

16 A. Yes.

17 Q. Okay. Did Detective Callahan take you up to your
18 room?

19 A. Yes.

20 Q. Okay. And was there ever a police officer stationed
21 outside your room?

22 A. No.

23 Q. Did Detective Callahan give you any instructions when
24 you were taken to the Howard Johnson's?

25 A. No.

1 Q. Did he ever tell you not to go back to your
2 neighborhood?

3 A. No.

4 Q. Did he ever tell you not to contact any family
5 members?

6 A. No.

7 Q. Did he ever tell you not to associate with any
8 friends in Dorchester or Roxbury?

9 MR. ROACHE: I object.

10 THE COURT: She's already been through it.
11 Overruled. Go on.

12 Q. Did he ever tell you not to associate with any
13 friends from Roxbury or Dorchester?

14 MR. CURRAN: Objection.

15 THE COURT: Overruled.

16 A. No.

17 Q. How did you pay for your meals, Mr. Evans, when you
18 were at the Howard Johnson's?

19 A. Just went to the restaurant and ordered whatever I
20 wanted.

21 Q. Can you explain to the jurors what do you mean by
22 went to the restaurant, was there a restaurant at the
23 hotel?

24 A. Yes, there was a Howard Johnson's, and instead of
25 going outside, you just walk down through the hallway

1 into the big restaurant.

2 Q. Okay. So inside the hotel you could come down from
3 your room and enter a restaurant?

4 A. Go through a little hall and then you enter the
5 restaurant.

6 Q. And is that where you -- let me ask you, where did
7 you eat your meals when you staying at the
8 Howard Johnson's?

9 A. The restaurant.

10 Q. Did you pay for your meals when you were staying at
11 the Howard Johnson's?

12 A. No.

13 Q. How did that work?

14 A. I would -- whenever I wanted to eat or anything, I
15 just go and order what I want, and when I ordered, I
16 signed, got a receipt, and that was it.

17 Q. Did you sign it to your room?

18 A. No.

19 Q. You just signed it?

20 A. Just signed it.

21 Q. And did anyone ever then come and ask you to pay your
22 bill?

23 A. No.

24 Q. Okay. How many meals would you eat at the restaurant
25 at the Howard Johnson's when you were staying there?

1 A. As many as I wanted.

2 Q. I'm sorry?

3 A. As many as I wanted.

4 Q. As many as you wanted?

5 A. Yes.

6 Q. So you could eat breakfast, lunch and dinner; is that
7 right?

8 A. Yes.

9 Q. Did Detective Callahan place any restrictions on you
10 about how much money you could spend at the restaurant?

11 A. No.

12 Q. Did you have a limit of \$20 a day, \$30 a day, \$40 a
13 day, anything like that?

14 A. No, I didn't.

15 Q. Were you told that you could eat alone, or were you
16 allowed to bring friends?

17 A. I could bring whoever I wanted.

18 Q. What do you mean by that?

19 A. If I wanted to take somebody out for dinner or lunch
20 or anything, I just go to the hotel and just go down to
21 the restaurant, order whatever I wanted.

22 Q. And how would you pay for it, Mr. Evans?

23 A. I would sign for it.

24 Q. Just sign it?

25 A. Just sign it.

1 Q. And did anyone ever ask you to pay for those bills,
2 the ones where your friends came to the restaurant?

3 A. Never.

4 Q. Did you ever have any family members over to your
5 hotel room?

6 A. Yes.

7 Q. On how many occasions, Mr. Evans, did you have family
8 members come to your hotel room?

9 A. It was quite a few times.

10 Q. Okay. And when they were at the hotel room, would
11 you treat them to dinner as well?

12 A. Yes.

13 Q. Okay. And during that time period, did
14 Detective Callahan ever come back to you and say stop
15 spending all this money?

16 A. No.

17 Q. Did he ever tell you don't take people out to the
18 restaurant?

19 A. No.

20 Q. Did he ever tell you not to associate with the people
21 in the neighborhood and treat them to dinner?

22 A. No.

23 Q. Now, while you were in the hotel at the
24 Howard Johnson's, did you ever have any conversations
25 with Detective Callahan?

1 A. I think, if I'm not mistaken, he came to my room
2 once, and that's when we was checking in. Whenever me
3 and Mr. Callahan met up again, we would meet in the
4 restaurant.

5 Q. So he wouldn't come up to your room, you would meet
6 him down in the restaurant?

7 A. Yes.

8 Q. How would you know that Detective Callahan was there
9 at the hotel?

10 A. He would either call or have the person downstairs in
11 the lobby would call.

12 Q. So somebody would call your room and tell you
13 Detective Callahan is down there?

14 A. Yes.

15 Q. And you would come down?

16 A. Yes.

17 Q. And how many occasions do you remember meeting
18 Detective Callahan in the restaurant area of the
19 Howard Johnson's?

20 A. Quite a few times.

21 Q. Okay. And when you met with Detective Callahan in
22 the restaurant area of the Howard Johnson's, did you pay
23 that bill?

24 A. No.

25 Q. Who paid that bill?

1 A. I have no idea.

2 Q. You don't know. But nobody ever asked you to pay for
3 whatever you ate while you were talking to
4 Detective Callahan?

5 A. Never.

6 Q. And just for the jury's information because I forgot
7 to ask, where was the Howard Johnson's?

8 A. It was right off Boston Street.

9 Q. Right off Boston Street, the old expressway?

10 A. Yes, the old expressway.

11 Q. And do you remember approximately when you got to the
12 Howard Johnson's? Do you have a time frame at all of
13 when you got to the Howard Johnson's other than some time
14 after you talked to Detective Callahan and you pointed to
15 the picture of Shawn Drumgold?

16 A. No, I don't.

17 Q. Okay. Now, while you were at the Howard Johnson's,
18 did Detective Callahan ever give you any money?

19 A. Yes.

20 Q. Can you tell the jurors how it would be that
21 Detective Callahan would give you money?

22 A. If I needed anything, the only thing I do is call
23 him, and he would come and have somebody call me
24 upstairs, and I would go downstairs to the lobby, and I
25 would meet him in the lobby or in the restaurant next

1 door, and he would just give it to me.

2 Q. So Detective Callahan would meet you and give you
3 money?

4 A. Yes.

5 Q. How much money would he give you, Ricky?

6 A. \$40, \$45.

7 Q. Okay. And how often would Detective Callahan give
8 you \$40 or \$45?

9 A. Whenever I needed it.

10 THE JUROR: I'm sorry, your Honor, I didn't
11 hear that answer.

12 THE COURT: He said whenever I needed it is
13 what he said.

14 Q. Whenever you needed it?

15 A. Yes.

16 Q. Okay. And how often would you need money while you
17 were staying at the Howard Johnson's?

18 A. If I needed anything or if I ran out of money, I
19 would just call him.

20 Q. Well, did you have a job when you were staying at the
21 Howard Johnson's?

22 A. Yes.

23 Q. Okay. And what types of things would you spend the
24 money on that Detective Callahan gave you while you were
25 staying at the Howard Johnson's?

1 A. Sneakers.

2 Q. Sneakers?

3 A. Yes, sneakers, outfits, whatever I needed, whatever I
4 needed to buy.

5 Q. So you would buy clothes or sneakers or whatever you
6 wanted with the money?

7 A. Yes.

8 Q. Did Detective Callahan ever say anything to you when
9 he gave you this money?

10 A. No.

11 Q. Okay. Do you have an idea or what's your best memory
12 as to how many times Detective Callahan gave you money
13 while you were staying at the Howard Johnson's?

14 A. I was at the Howard Johnson's about eight months, and
15 I can't recall how many times he actually brought
16 money.

17 Q. Okay. Now, let's talk a little bit about the
18 conversations that you would have with Detective Callahan
19 in the restaurant downstairs at the Howard Johnson's
20 right on Boston Street. What types of things would you
21 talk about with Detective Callahan while you were in the
22 restaurant at the Howard Johnson's?

23 A. I would meet him where we usually meet at, where we
24 usually meet at when you come downstairs, you walk in the
25 hallway, and then you go into the restaurant, there was a

1 table sitting right to the side, that's where I usually
2 meet him at, and he could be sitting there. It's usually
3 three of us.

4 Q. Stop right there. When you say three of us, do you
5 remember who the third person was, it was you, Detective
6 Callahan and who else?

7 A. Mr. McDonough.

8 Q. Mr. McDonough?

9 A. Yes.

10 Q. So the three of you were sitting in the restaurant
11 downstairs at the Howard Johnson's. What were you
12 discussing?

13 A. They wouldn't -- they wouldn't directly say it to
14 me.

15 Q. Wouldn't say what to you, Mr. Evans?

16 A. They would have conversations like amongst
17 themselves.

18 Q. Conversations about what? What was the topic of the
19 conversations that Detective Callahan and
20 Detective McDonough were having in front of you at the
21 Howard Johnson's on Boston Street?

22 A. About Shawn, Terrance, guns.

23 Q. Okay. Let's take them one at a time. What do you
24 remember Detective Callahan saying to you about guns?

25 MR. ROACHE: Objection.

1 THE COURT: Overruled. Overruled. Go on.

2 Q. What do you remember, Ricky, Detective Callahan
3 saying to you about guns?

4 A. We would sit there, he wouldn't directly say it to
5 me, he would say it to Mr. McDonough, but he was like,
6 "Yeah, Shawn had the silver gun and Terrance had the
7 black gun."

8 Q. Stop right there. So, in front of you at the
9 Howard Johnson's on Boston Street while were you staying
10 there, you had a conversation with Detective Callahan,
11 Detective Callahan had a conversation in front of you
12 where he said to Detective McDonough, "Remember that
13 Shawn had the silver gun and Terrance had the black
14 gun"?

15 A. Yes, in a sense, yes.

16 MS. HARRIS: Objection.

17 THE COURT: Overruled, go on.

18 Q. What did you understand that conversation to mean?

19 A. By the way they was talking, by the way they was
20 talking, it was like they was feeding me information.

21 Q. Why did you come to that conclusion?

22 A. Because, I mean, why when he was sitting there and
23 talking to Detective McDonough about the guns and I was
24 sitting right there across the table from me and the way
25 they were saying it was like they were feeding me things

1 to say.

2 Q. Did Detective Callahan ever specifically say you have
3 to testify that Shawn Drumgold has a silver gun and
4 Terrance Taylor has a black gun?

5 A. No.

6 Q. So, where did you learn that?

7 A. Through Mr. Callahan.

8 Q. And was that documents at the Howard Johnson's?

9 A. Yes.

10 Q. In the restaurant?

11 A. Yes.

12 Q. Okay. And do you remember how many times you
13 discussed or Detective Callahan discussed the fact that
14 Shawn Drumgold, "Remember Shawn Drumgold had a silver gun
15 and Terrance Taylor had a black gun"?

16 A. Yeah. Do I remember how many times?

17 Q. Yes.

18 A. No, I don't recall how many times it was.

19 Q. Prior to Detective Callahan having that conversation
20 in front of you at the Howard Johnson's about
21 Shawn Drumgold having a silver gun and Terrance Taylor
22 having a black gun, did you have any idea what the facts
23 of the Tiffany Moore case were at that time?

24 A. No.

25 Q. Had you ever seen Shawn Drumgold on August 19, 1988

1 with a silver gun?

2 A. No.

3 Q. Had you ever seen Terrance Taylor on August 19, 1988
4 with a black gun?

5 A. No.

6 Q. So, Mr. Evans, the information regarding the silver
7 gun and the black gun, you testified to that at
8 Shawn Drumgold's criminal trial; do you remember that?

9 A. I think I do, yes.

10 Q. Okay. Where did you get the information about
11 Shawn Drumgold having a silver gun and Terrance Taylor
12 having a black gun?

13 A. I picked it up from Mr. Callahan and Mr. McDonough
14 talking about it in the hotel.

15 Q. Okay. Now, when Mr. McDonough and Detective Callahan
16 talked in front of you, "Remember Shawn has the silver
17 gun and Terrance has the black gun," did you talk about
18 anything other than the Tiffany Moore case during those
19 meetings?

20 A. Not that I recall, no.

21 Q. Okay. And other than him telling you that
22 Shawn Drumgold had a black gun, I'm sorry, a silver gun
23 and Terrence Taylor had a black gun, do you remember
24 having any discussions with Detective Callahan about the
25 type of car that was supposed to have been used on the

1 night of August 19, 1988?

2 MS. HARRIS: Objection.

3 THE COURT: Overruled.

4 Q. Ricky, do you remember having any conversations with
5 Detective Callahan or I shouldn't say that, do you
6 remember Detective Callahan having any conversations in
7 front of you about the type of car that was alleged to
8 have been used on August 19th of 1988 in the
9 Tiffany Moore case?

10 A. I could probably, but I don't recall it right now.

11 Q. Do you ever remember Detective Callahan mentioning a
12 white car?

13 MR. ROACHE: Objection.

14 THE COURT: Overruled.

15 A. Not that I remember.

16 Q. Do you remember testifying at trial about a white
17 car?

18 A. No.

19 Q. Okay. You told us before that before you went to the
20 hotel you had a conversation with Detective Callahan
21 regarding the white car. Is that the only conversation
22 that you had with Detective Callahan about the white car,
23 or did you have other conversations?

24 A. It could have been. I don't remember.

25 Q. Okay. On how many occasions did Detective Callahan

1 ask you to come down to the restaurant at the
2 Howard Johnson's to discuss the Tiffany Moore case?

3 MS. HARRIS: Objection.

4 THE COURT: Overruled.

5 A. I don't remember exactly how many times, but whenever
6 he came and they would call upstairs, I would go
7 downstairs and meet him. It was quite a few times I
8 would go down and meet him.

9 Q. And the one conversation you told about the silver
10 gun and the black gun and the other conversation before
11 you got to the hotel about the white car, were there
12 conversations about Chris Chaney and Mervin Reese?

13 A. Chris Chaney, I don't recall.

14 Q. Other than the conversation about the white car and
15 the conversation about Shawn Drumgold having the silver
16 gun and Terrance Taylor having a black gun, do you
17 remember whether or not Detective Callahan ever talked to
18 you about the clothing that the suspects were supposed to
19 be wearing the night of August 19, 1988?

20 MS. HARRIS: Objection.

21 THE COURT: Overruled.

22 A. I don't remember.

23 Q. When you had the conversation with Detective Callahan
24 in the restaurant at the Howard Johnson's and you talked
25 about the firearms in this case and you talked about the

1 white car, do you remember specifically any other
2 conversations that Detective Callahan had in front of you
3 regarding the Tiffany Moore murder and Shawn Drumgold?

4 A. Not that I can remember, no.

5 Q. Okay. Do you remember -- I didn't want to get into
6 his trial testimony now, but let me ask you this, when
7 you discussed with Detective Callahan the details of the
8 Tiffany Moore case, you had described earlier that you
9 felt like he was feeding you information. What do you
10 mean by that?

11 A. Because, I mean, whenever we would talk, he wouldn't
12 directly talk to me, you know, he would talk to
13 Mr. McDonough about certain things about the case, and I
14 would pick it up, you know, and like he would talk, he
15 would discuss something with Mr. McDonough, I would pick
16 it up, and what he's telling me, that's what they wanted
17 me to say at the case.

18 Q. So, when Detective McDonough talked in front of you
19 about the details of the Tiffany Moore murder and
20 Shawn Drumgold's alleged involvement, you came to the
21 conclusion that he wanted you to say that?

22 A. Yes.

23 Q. What gave you that idea?

24 A. Because I was getting everything that I wanted, I
25 mean, everything that I wanted, all I had to do was call

1 him and ask him.

2 Q. So, did you believe -- at that time, Mr. Evans, what
3 did you believe the reason you were in the hotel at that
4 time was?

5 A. At first, I don't know. I don't recall.

6 Q. That wasn't my question, I'm sorry. When you were
7 having these conversations with Detective Callahan in the
8 restaurant and he was discussing the details of the
9 murder of Tiffany Moore and Shawn Drumgold's alleged
10 involvement, did you have any personal knowledge of what
11 happened the night of August 19, 1988?

12 A. No.

13 Q. Where did you learn the details that you provided in
14 your testimony, Mr. Evans?

15 A. Mr. Callahan.

16 Q. Did you, in fact, ever meet with Shawn Drumgold on
17 the night of August 19, 1988?

18 A. No.

19 Q. But you testified at the criminal trial that you did?

20 A. Yes.

21 Q. Why did you do that?

22 A. Because, I mean, I don't know, I just did it because
23 I was getting -- at the time I was getting everything I
24 wanted, and I thought that if I didn't do it, it all
25 would be taken away.

1 Q. So you thought if you didn't go to the criminal trial
2 the way you think Detective Callahan wanted you to, you
3 wouldn't be able to stay at the Howard Johnson's
4 anymore?

5 A. Yes.

6 Q. You wouldn't be able to get any money anymore?

7 A. Yes.

8 Q. Now, other than the money and the Howard Johnson's
9 and the friends that you brought over and the meals that
10 you had, did Detective Callahan make any promises about
11 your pending cases?

12 A. Yes.

13 Q. What did Detective Callahan promise you about your
14 pending cases?

15 A. That he would wipe them out, that he would have them
16 all taken care of.

17 Q. Okay. Did you know what Detective Callahan meant by
18 wipe them out?

19 A. Yes.

20 Q. Okay. So the conversation that you had with
21 Detective Callahan about wiping out your criminal pending
22 charges, did that take place before you testified in the
23 Shawn Drumgold murder trial?

24 A. Yes, I think it was.

25 Q. Okay.

1 A. I'm not too sure.

2 Q. And when you testified a minute ago that you were
3 afraid if you didn't go through and testify at the
4 criminal trial that all of these things would be taken
5 away, is one of the other things you were worried about
6 those pending criminal cases?

7 A. Yes.

8 Q. Okay. So, when Detective Callahan met with you
9 downstairs and told you about the guns and told you about
10 the white car, do you remember him discussing -- any
11 other details stick out in your mind in terms of what he
12 discussed with you downstairs in the Howard Johnson's
13 with Detective McDonough?

14 A. Not that I can remember right now.

15 Q. Okay. Now, let me ask you this, was
16 Detective McDonough always present?

17 A. Not always.

18 Q. Okay. Were there occasions when Detective Callahan
19 came on his own without Detective McDonough?

20 A. Yes.

21 Q. Okay. And during those occasions, Mr. Evans, would
22 Detective Callahan have an actual conversation with you,
23 not a conversation in front of you?

24 A. No, Mr. Callahan came, he was by himself, the two of
25 us would sit and have dinner, the two of us.

1 Q. Dinner?

2 A. Dinner or whatever time of day.

3 Q. Did you consider Detective Callahan a friend back
4 then?

5 A. Yes.

6 THE COURT: Why don't we stop at this point.
7 It is one o'clock. We'll see you all at 9:00 on Monday
8 morning. We're not going to be sitting tomorrow.

9 MS. SCAPICCHIO: Before you release the jury,
10 can I see you for a minute?

11 THE COURT: Yes, counsel at sidebar.

12 (THE FOLLOWING OCCURRED AT SIDEBAR:)

13 MS. SCAPICCHIO: I just want to remind the
14 Court, I'm not sure what the Court's schedule is, but on
15 Tuesday, the 15th, I argue a case before the
16 First Circuit at 9:30.

17 THE COURT: I was thinking that I would work
18 with you to rearrange that and I would work with you to
19 rearrange so it would be the last thing in the morning.

20 MS. SCAPICCHIO: I moved it to the first, your
21 Honor.

22 THE COURT: That's because you didn't know
23 because I have another naturalization in Lawrence.
24 Unfortunately I have to leave slightly earlier. If both
25 of us, we went to 12:30. You could work with Maryellen

1 the First Circuit will do what we want to do in terms of
2 scheduling.

3 MS. SCAPICCHIO: I got a revised order that had
4 me first in the pecking order.

5 THE COURT: Don't worry, we'll see if we can
6 take care of it.

7 (THE SIDEBAR CONFERENCE WAS CONCLUDED.)

8 THE COURT: So you'll have a break now tomorrow
9 and Saturday and Sunday. Again, we urge you, let me
10 change that, I order you not to read anything about this
11 case, not to go online, not to talk to anyone about this
12 case, not to do anything that would undermine the work
13 we've already put into it in your selection and in you
14 beginning, so just go home and have a good time.

15 Again, even with these breaks I want you to
16 know we will monitor the progress of the case so your
17 obligations will end when we said they will end. Leave
18 your notes on your chair and all rise for the jury,
19 please.

20 (Jurors exited the courtroom.)

21 THE COURT: Thank you, all.

22 MR. REILLY: Can we have a moment after the
23 witness is excused?

24 THE COURT: Everybody can be seated. What is
25 the issue?

1 MS. HARRIS: Two issues, first, during the
2 opening, it's my understanding that Ms. Scapicchio called
3 into the question the integrity of the entire
4 investigation, and I would suggest that that means that
5 we can put in through Detective Callahan everything he
6 did and the substance of everything he turned over and
7 that was delivered to the district attorney's office and
8 to the defense counsel so that would be the 45, however
9 many investigatory reports that contain tons of
10 exculpatory information that have to do with alibis,
11 different witnesses who contradict.

12 All of this contradictory evidence I think is
13 now in fairly and squarely, so I think the suggestion was
14 had they known Ricky Evans, rewards, inducements, that
15 would call into question the question of the entire
16 investigation. I think we're entitled to show this jury
17 brought this man everything he found into his
18 investigation and put all of it, good, bad in front of
19 the jury.

20 THE COURT: You don't disagree this information
21 shouldn't have been turned over to the prosecutor?

22 MS. HARRIS: Which information?

23 THE COURT: That is to say, these promises and
24 awards and inducements to Ricky Evans, you don't disagree
25 that it would have been something that should have been

1 turned over to the prosecution at the beginning of the
2 trial?

3 MS. HARRIS: I don't agree with Ms. Scapicchio
4 about what she believes given, told or promised.

5 THE COURT: My point is the suit here was there
6 was an obligation to turn over X material to the
7 prosecutor.

8 MS. HARRIS: Yes.

9 THE COURT: That obligation existed regardless
10 of what else was turned over to the prosecution, to the
11 prosecutor.

12 MS. HARRIS: I agree.

13 THE COURT: So I understood what she was
14 saying, it should have been turned over, had it been
15 turned over, the cross-examination of Ricky Evans would
16 be different. That's all I had understood her to say.

17 MS. HARRIS: I understood her to say that would
18 bring into question all of the other evidence that the
19 jury shouldn't be concerned about, all of that is adduced
20 at trial is now under a cloud of suspicion.

21 THE COURT: I don't think she opened the door
22 to that degree. What is your second point, Ms. Harris?

23 MS. HARRIS: My second point, I would like some
24 guide on the leading because this man is the most
25 important witness in this case, and the fact I can't make

1 one statement or remember one thing about what was
2 promised or given to him, what suggestion was made to
3 him, I think that this jury and that we have a right to
4 hear it out of his mouth, and I honestly, your Honor, in
5 every transcript that has preceded in the past six years
6 he has not been able to pointedly identify a single
7 person or identify a single thing that was said to him,
8 and I think that it is incredibly misleading for this
9 story to come out through counsel.

10 THE COURT: It seemed to me that questions
11 begin relative to your meetings with, just take a few
12 examples of what we're objecting to, "During those
13 occasions, Mr. Evans, would Detective Callahan have an
14 actual conversation in front of you?" That's not
15 leading, that's asking, that's the only way you can frame
16 the question.

17 With respect to sometimes she would direct his
18 attention to what he testified at trial and then said,
19 "Did you ever see these, the details with respect to the
20 white car and the gun, had you ever seen that?" "No."
21 "Who referred that to you?" "Callahan." What's wrong
22 with that?

23 MS. HARRIS: Your Honor, we started with
24 Mr. Evans saying he showed me six pictures that went down
25 to when they showed you Shawn Drumgold, maybe Terrance

1 Taylor and Theron Davis, what did they do then? Every
2 error that is made by Mr. Evans is corrected and restated
3 questions by Ms. Scapicchio. That's why I'm objecting,
4 your Honor.

5 THE COURT: I understand. Well, my ruling
6 stands. I'll be attentive to this going forward, but I
7 didn't hear anything as dramatic as you heard, that's why
8 I was making the rulings that I was making so I will be
9 more attentive to that even going forward, but I'm not
10 going to say anything at this point. Anything else?

11 MR. CURRAN: Judge, just quickly on the first
12 issue because the argument that was made is how do you
13 trust this investigation, if defense knew the case would
14 have been about police misconduct? That was argued in
15 her opening statement. It now calls into question the
16 whole investigation and the conduct of Tim Callahan.

17 THE COURT: I don't think it does. You, on the
18 other hand, also it seems to me made a comment during the
19 course of your examination, your argument vouching,
20 vouching for witnesses in this case, and there was no
21 objection to that, and I can highlight that. I think at
22 this point with respect to the opening statements the
23 sides are even. Anything else, Mr. Roache, did you have
24 anything?

25 MR. ROACHE: Your Honor, just, again, on the

1 leading part of questions, I agree with my Sister, I got
2 up and objected when Mr. Evans said he was shown six
3 photographs that all of a sudden turned into three
4 photographs by Ms. Scapicchio. I got up and objected.
5 You overruled me on that, your Honor, and I find that
6 that is very important evidence.

7 THE COURT: I understand. My rulings were
8 within my judgment of what was going on in the case. If
9 you object again, I'll take a look at it. The rulings
10 stand. Is there anything else I have to address?

11 MS. SCAPICCHIO: No, your Honor.

12 THE COURT: Thank you.

13 (Whereupon, the hearing was suspended at
14 1:12 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)
CITY OF BOSTON)

I, Valerie A. O'Hara, Registered Professional Reporter, do hereby certify that the foregoing transcript was recorded by me stenographically at the time and place aforesaid in No. 04-11193-NG, in re: Shawn Drumgold vs. Timothy Callahan and thereafter by me reduced to typewriting and is a true and accurate record of the proceedings.

/S/ VALERIE A. O'HARA

VALERIE A. O'HARA

REGISTERED PROFESSIONAL REPORTER

DATED SEPTEMBER 10, 2009